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AMENDMENT NO. _____

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AMEND Senate Bill No. 3341

House Bill No. 3298*

by deleting all language after the enacting clause and by substituting the following:

Section 1. Tennessee Code Annotated, Section 6-51-102, is amended by deleting subsection (b) and replacing it with the following:

(b)(1) Before any territory may be annexed under this section by a municipality upon its own initiative, the governing body shall adopt a plan of services setting forth at a minimum the services to be provided and the projected timing of the services.

(2) The plan of services shall include, but not be limited to: police protection, fire protection, water service, electrical service, sanitary sewer or septic system service, solid waste collection, road and street construction and repair, recreational facilities and programs, street lighting, and zoning service. The plan may except services that are provided by another public agency or private company in the area to be annexed, other than those services provided by the county.

(3) The plan of services shall specify the level of each of the enumerated services to be provided as of the effective date of the annexation. The plan of services shall also include the projected timing by which such services will be provided at a level substantially commensurate with the level of services provided in similar areas of the municipality before the annexation.

(4) Before any plan of services is adopted, it must be submitted to the local planning commission, if there is one, for study and a written report to be

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rendered within ninety (90) days of submission, unless by resolution the governing body allows a longer period. Prior to the adoption of the plan of services, the municipality shall hold a public hearing. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the municipality at least seven (7) days before the hearing. The notice shall include the locations of a minimum of three (3) copies of the plan of services, which the municipality shall provide for public inspection during all business hours from the date of notice until the public hearing.

Section 2. Tennessee Code Annotated, Section 6-51-108, is amended in Subsection (b) by deleting the language "a year" from the first sentence of the subsection and replacing it with "one hundred and eighty (180) days".

Section 3. Tennessee Code Annotated, Section 6-51-108 is amended by deleting the next to the last sentence in subsection (b) and by adding the following as new subsections (c) and (d):

(c) A municipality may amend a plan of services by resolution of the governing body only after a public hearing for which notice has been published at least seven (7) days in advance in a newspaper of general circulation in the municipality when:

(1) The amendment is reasonably necessary due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality; or

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(2) The amendment does not materially or substantially decrease the type or level of services or substantially delay the provision of services specified in the original plan; or

(3) The amendment:

(i) proposes to materially and substantially decrease the type or level of service under the original plan or to substantially delay those services; and

(ii) is not justified under (c)(1); and

(iii) has received the approval in writing of a majority of the property owners by parcel in the area annexed. In determining a majority of property owners, a parcel of property with more than one owner shall be counted only once and only if owners comprising a majority of the ownership interests in the parcel petition together as the owner of the particular parcel.

(d) An aggrieved property owner in the annexed territory may bring an action in the appropriate court of equity jurisdiction to enforce the plan of services at any time after one hundred and eighty (180) days after an annexation by ordinance takes effect and until the plan of services is fulfilled, and may bring an action to challenge the legality of an amendment to a plan of services if such action is brought within thirty (30) days after the adoption of the amendment to the plan of services. If the court finds that the municipality has amended the plan

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of services in an unlawful manner, then the court shall decree the amendment null and void and shall reinstate the previous plan of services. If the court finds that the municipality has materially and substantially failed to comply with its plan of services for the territory in question, then the municipality shall be given the opportunity to show cause why the plan of services was not carried out. If the court finds that the municipality's failure is due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality which materially and substantially impeded the ability of the municipality to carry out the plan of services, then the court shall alter the timetable of the plan of services so as to allow the municipality to comply with the plan of services in a reasonable time and manner. If the court finds that the municipality's failure was not due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality which materially and substantially impeded the ability of the municipality to carry out the plan of services, then the court shall issue a writ of mandamus to compel the municipality to provide the services contained in the plan, shall establish a timetable for the provision of the services in question, and shall enjoin the municipality from any further annexations until the services subject to the court's order have been provided to the court's satisfaction, at which time the court shall dissolve its injunction. If the court determines that the municipality has failed without cause to comply with the plan of services or has unlawfully amended its

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plan of services, the court shall assess the costs of the suit against the municipality.

Section 4. Tennessee Code Annotated, Section 6-51-115, is amended by designating the existing section as subsection (a), renumbering present subsections as subdivisions, and adding the following as new subsections:

(b) In addition to the preceding provisions of this section, when a municipality annexes territory in which there is retail or wholesale activity at the time the annexation takes effect or within three (3) months after the annexation date, the following apply:

(1) Notwithstanding the provisions of § 57-6-103 or any other law to the contrary, for wholesale activity involving the sale of beer, the county shall continue to receive annually an amount equal to the amount received by the county in the twelve (12) months immediately preceding the effective date of the annexation for beer establishments in the annexed area that produced Wholesale Beer Tax revenues during that entire twelve (12) months. For establishments that produced Wholesale Beer Tax revenues for at least one (1) month but less than the entire twelve (12) month period, the county shall continue to receive an amount annually determined by averaging the amount of Wholesale Beer Tax revenue produced during each full month the establishment was in business during that time and multiplying this average by twelve (12). For

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establishments which did not produced revenue before the annexation date but produced revenue within three (3) months after the annexation date, and for establishments which produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of Wholesale Beer Tax revenue produced during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision are subject to the exceptions in subsection (d).

(2) Notwithstanding the provisions of § 67-6-712 or any other law to the contrary, for retail activity subject to the Local Option Revenue Act, the county shall continue to receive annually an amount equal to the amount of revenue the county received pursuant to § 67-6-712(a)(2)(A) in the twelve (12) months immediately preceding the effective date of the annexation for business establishments in the annexed area that produced Local Option Revenue Act revenue during that entire twelve (12) months. For business establishments that produced such revenues for more than a month but less than the full twelve (12) month period, the county shall continue to receive an amount annually determined by averaging the amount of Local Option Revenue produced by the establishment and allocated to the county under § 67-6-712(a)(2)(A) during each full month the establishment was in business during that time

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and multiplying this average by twelve (12). For business establishments which did not produce revenue before the annexation date and produced revenue within three (3) months after the annexation date, and for establishments which produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of Local Option Revenue produced and allocated to the county under § 67-6-712(a)(2)(A) during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision are subject to the exceptions in subsection (d).

(c) Notwithstanding the provisions of § 67-2-119 or any other law to the contrary, when a municipality annexes territory in which there is residential use at the time the annexation takes effect, the county shall continue to receive annually an amount from revenues from the Hall Income Tax equal to the amount the county received from payments made by residents of the annexed territory for the taxable year immediately preceding the effective date of the annexation, subject to the exceptions in subsection (d). The requirements of this subsection do not apply to any annexation effected pursuant to petition or affirmative vote of the residents in a referendum.

(d) Subsections (b) and (c) are subject to these exceptions:

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(1) Subdivision (b)(1) ceases to apply as of the effective date of the repeal of the Wholesale Beer Tax, should this occur.

(2) Subdivision (b)(2) ceases to apply as of the effective date of the repeal of the Local Option Revenue Act, should this occur.

(3) Subsection (c) ceases to apply as of the effective date of the repeal of the Hall Income Tax, should this occur.

(4) Should the General Assembly reduce the amount of revenue from the Wholesale Beer Tax, Local Option Revenue Act, or Hall Income Tax accruing to municipalities by changing the distribution formula, the amount of revenue accruing to the county under subsections (b) and (c) will be reduced proportionally as of the effective date of the reduction.

(5) A county, by resolution of its legislative body, may waive its rights to receive all or part of the revenues provided by subsections (b) and (c). In these cases, the revenue shall be distributed as provided in §§ 57-6-103, 67-6-712, and 67-2-119 of the respective tax laws unless otherwise provided by agreement between the county and municipality.

(6) Annual revenues paid to a county by or on behalf of the annexing municipality are limited to the annual revenue amounts provided in subsections (b) and (c) and known as "annexation date revenue" as defined in subdivision (e)(2) hereinafter. Annual situs-based revenues in excess of the "annexation date revenue" allocated to one or more

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counties shall accrue to the annexing municipality. Any decrease in the revenues from the situs-based taxes identified in subsection (b) and (c) herein shall not affect the amount remitted to the county or counties pursuant to said subsections (b) and (c) except as otherwise provided in this subsection.

(7) In territories annexed by referendum or ordinance upon petition of the residents or property owners, if in any fiscal year the annual situs-based revenues derived from the annexed territory are insufficient for the county to receive the full amount of the annexation date revenue, then the county shall receive as much revenue as is available from the allocations from the wholesale Beer Tax, Local Option Sales Tax and Hall Income Tax under subsections (b) and (c) herein.

(e)(1) It is the responsibility of the county within which the annexed territory lies to certify and to provide to the department of revenue a list of all tax revenue producing entities within the proposed annexation area.

(2) The department of revenue shall determine the local share of revenue from each tax listed in this section generated within the annexed territory for the year before the annexation becomes effective, subject to the requirements of subsection (b) and (c). This revenue shall be known as the "annexation date revenue".

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(3) The department of revenue with respect to the revenues described in subdivision (b)(2) and subsection (c), and the municipality with respect to the revenues described in subdivision (b)(1), shall annually distribute an amount equal to the annexation date revenue to the county of the annexed territory. The fact that both the department of revenue and the municipality collect situs-based revenues and that these collections will vary shall not prevent the county from receiving the total and full amount of its annexation date revenue annually in accordance with subdivision (d)(6), except as provided in subdivision (d)(7).

Section 5. Tennessee Code Annotated, Title 6, Chapter 51, Part 1, is amended by adding the following as a new section:

Section _____. A municipality may not annex by ordinance upon its own initiative territory in any county other than the county in which the city hall of the annexing municipality is located, with these exceptions:

(1) A municipality located in two (2) or more counties as of November 25, 1997, may enact such annexations in all such counties, unless the percentage of the municipal population residing in the county or counties other than those in which the city hall is located is less than five percent (5%) of the total population of the municipality.

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(2) A municipality may enact such an annexation with the approval by resolution of the county legislative body of the county in which the territory proposed to be annexed is located.

Section 6. No provision of this act applies to an annexation in any county with a metropolitan form of government in which any part of the general services district is annexed into the urban services district.

Section 7. Tennessee Code Annotated, Section 6-51-103, is amended by deleting subsection (b) in its entirety and substituting instead the following new subsections (b) and (c) and redesignating accordingly:

(b)(1) A county shall be deemed an aggrieved owner of property giving the county standing to contest an annexation ordinance if the county is petitioned by a majority of the property owners by parcel within the territory which is the subject of the annexation to represent their interests. In determining a majority of property owners, a parcel of property with more than one owner shall be counted only once and only if owners comprising a majority of the ownership interests in the parcel petition together as the owner of the particular parcel.

(2) A petition by property owners under this section shall be presented to the county clerk, who shall forward a copy of such petition to the county executive, county assessor of property and the chairperson of the county legislative body. After examining the evidence of title based upon the county records, within fifteen (15) days of receiving the copy of

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the petition, the assessor of property shall report to the county executive and the chairperson of the county legislative body whether or not in his or her opinion a majority of the property owners by parcel have petitioned the county according to this section.

(3) Notwithstanding any other provision of this chapter, a petition by property owners to the county under this section to contest an annexation must be brought within thirty (30) days of the final passage of the annexation ordinance, and if the county legislative body adopts a resolution to contest the annexation, the county must file suit to contest the annexation pursuant to this section within sixty (60) days of the final passage of the annexation ordinance.

(c) The aggrieved owner of property shall have the burden of proving that the annexation ordinance is not reasonable for the overall well-being of the communities involved. The court shall hear and decide the case without a jury based upon a preponderance of the evidence.

Section 8. Tennessee Code Annotated, Section 6-51-102, is amended by adding the following as an additional subsection:

(e) A municipality may not extend its corporate boundaries by annexation of a public right-of-way, or any easement owned by a governmental entity or quasi-governmental entity, railroad, utility company, or federal entity such as the U.S. Army Corps of Engineers or the Tennessee Valley Authority, or natural or

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man-made waterway, or any other corridor except in the following circumstances:

(1) the annexed area also includes each parcel of property contiguous to the right of way, easement, waterway or corridor adjacent on at least one side, or (2) the municipality receives the approval of the county legislative body of the county wherein the territory proposed to be annexed lies.

Section 9. Tennessee Code Annotated, Title 6, Chapter 51, is amended by adding the following as a new section:

Section __. (a)(1) A municipality may make binding agreements with other municipalities and with counties to refrain from exercising any power or privilege granted to the municipality by this chapter, to any degree contained in the agreement, including but not limited to the authority to annex.

(2) A county may make binding agreements with municipalities to refrain from exercising any power or privilege granted to the county by this chapter, to any degree contained in the agreement, including but not limited to the authority to receive annexation date revenue.

(3) Any agreement made pursuant to this subsection need not have a set term, but after the agreement has been in effect for five (5) years, any party upon giving ninety (90) days written notice to the other parties is entitled to a renegotiation or termination of the agreement.

(b) Notwithstanding any provision of this chapter or any other law to the contrary, any annexation reserve agreement or any agreement of any kind either

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between municipalities or between municipalities and counties setting out areas reserved for future municipal annexation and in effect on the effective date of this act are ratified and remain binding and in full force and effect. Any such agreement may be amended from time by mutual agreement of the parties. Any such agreement or amendment may not be construed to abrogate the application of any provision of this chapter to the area annexed pursuant to the agreement or amendment.

(c)(1) No provision of this chapter shall operate to invalidate an annexation ordinance done pursuant to a written contract between a municipality and a developer in existence on the effective date of this act.

(2) This subsection shall only apply to municipal and county governments in any county with a charter form of government.

Section 10. This act shall not apply to annexation ordinances being litigated on the effective date of this act.

Section 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

Section 12. (a) Sections 1 and 3 of this act shall be retroactive and shall apply to any annexation by ordinance upon a municipality's own initiative initiated on or after November 25, 1997. Notwithstanding any other provision of law, for a municipality

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required to adopt or amend a plan of services because of the retroactivity of or impossibility of complying with Section 1 of this act, solely for the purpose of complying with those requirements except subdivision (b)(4) of Section 1, until July 1, 1998, the municipality may adopt or amend the plan of services by resolution after receiving the advice of the local planning commission, if one exists.

(b) All other provisions of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to annexation ordinances adopted on final reading on or after such date.

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